Supreme Court, U.S.
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No.

In the

Supreme Court of the United States

MATTIE WRIGHT-DEAN
and STAMBERT DEAN,

Petitioners,

v.

BARBARA GARLAND CAROLYN WILSON MURRELL, INC
and WACHOVIA MORTGAGE CO.,

Respondents.

PETITION FOR A WRIT OF CERTIORARI TO
THE UNITED STATES COURT OF APPEALS
FOR THE DISTRTICT OF COLUMBIA

PETITION FOR WRIT OF CERTIORARI

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22 pp

QUESTIONS PRESENTED FOR REVIEW

1. Whether the long standing rule that a party must elect between breach of contract and rescission before filing a lawsuit unconstitutionally infringes upon the rights to a trial by jury and of access to the courts?

2. Whether the use of petitioners' in forma pauperis application to impeach the petitioners credibility on their underlying claim infringed upon petitioners' right to that status, a guaranteed by the United States Constitution?

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PETITION FOR A WRIT OF CERTIORARI

Petitioners, Mattie Wright-Dean and Stambert Dean, respectfully pray that a writ of certiorari issue to review the August 30, 2001, opinion of the District of Columbia Court of Appeals, rehearing and rehearing en banc denied January 17, 2002.

OPINION BELOW

The opinion of the District of Columbia Court of Appeals dated August 30, 2001, is reported at 779 A. 2d 911, and is reprinted in the Petition Appendix ("App.") beginning at App.1. The judgment on the jury verdict and the order denying the petition for rehearing and rehearing en banc are set out in the appendix at App. 11a, 12a.

STATEMENT OF JURISDICTION

Petitioners seek review of the District of Columbia Court of Appeals' Opinion dated August 30, 2001.

The united States Supreme Court has jurisdiction to review cases from State Court of Appeals by virtue of 28 USC Sec. 1257.

STATEMENT

The long standing rule that a party must elect between contract and rescission before filing a lawsuit has been eroded by decisions of this court, notably, Beacon Theatres, Inc. v. Westover, 359 U.S. 500, 79 S.Ct. 948, 3 L. Ed. 2d 988; Dairy Queen v. Wood, 369 U.S. 469, 82 S.Ct. 894, 8 L Ed.2d 44;

Ross v. Bernhard, 396 U.S. 531, 90 S. Ct.733, 24 L. Ed. 2d 729.

The rights to trial by jury and of access to the courts have placed the old rule of election between breach of contract and rescission remedies before filing a lawsuit in an anachronistic mode, making it a relic of the past.

The petitioners filed suit for breach of contract or for rescission. During pre-trial, the trial court granted the motion of respondents to dismiss the rescission count on the basis that by filing a lawsuit, petitioners were deemed to have waived the remedy of rescission, even though the complaint sought rescission as an alternative remedy.

While petitioners were aware that they could not have both remedies upon the conclusion of the lawsuit, forcing them to make an election between law and equity before suit was filed impermissibly infringed upon their right to a jury trial and of access to the courts.

The Petitioners argued below that they did not have to elect a remedy pre-trial, as forcing them to choose between law and equity before suit was filed, impermissibly infringed upon their right to a trial by jury, as they could be forced to either give up the right to a trial by jury and to proceed on equitable grounds for the sole reason that their case presented issues of law and equity. A policy of law which provides for a single recovery for a single harm, does not require that the choice be made pre-trial. The District of Columbia Court of Appeals disagreed, and affirmed the dismissal of the rescission count of the complaint for the sole reason that petitioners joined a legal claim with an equitable claim. Thus, petitioners were punished for electing a jury trial on the law issue.

A party who exercises a constitutional right cannot be punished for the exercise of that right. Griffin v. California, 380 U.S. 609, 85 S. Ct.1229, 14 L. Ed 2d 106. Requiring that petitioners not file a lawsuit seeking both damages and rescission as a condition for obtaining a jury trial on the issue

of damages violates Griffin.

Next, petitioners were granted in forma pauperis status by the trial court. Little v. Steater, 452 U.S. 1, 101 S. Ct. 2202, 68 L.Ed. 2d 627. The District of Columbia Court of Appeals in Cabillo v. Cabillo, 317 A. 2d 866, held that an individual who is improperly denied the right to proceed in forma pauperis is denied due process of law in violation of the United States Constitution.

In the instant case, the respondents were permitted over objection to use the affidavit of petitioners in their in forma pauperis application to impeach the petitioners at trial. On appeal, the District of Columbia Court of Appeal affirmed the ruling of the trial court which allowed respondents to use petitioners in forma pauperis application to impeach the petitioners, ruling that such impeachment was permissible as prior bad conduct relevant to credibility determination.

While it is permissible on a hearing of the issue as to whether or not the petitioners were qualified for in forma pauperis status to use their in forma pauperis application to impeach their credibility, once the status of in forma pauperis was granted, that issue was foreclosed, and the application could not and should not be used against petitioners at their trial. Here, once more, for the sole reason that petitioners exercised their constitutional rights to obtain in forma pauperis status, their application was used to attack their credibility. Thus, petitioners were once more punished for the exercise of their constitutional rights.

The chilling effect of such a ruling is readily discernable. Parties may chose to forego application for in forma pauperis status if their application can be used against them in their case in chief. Rather, if a party wishes to contest the in forma pauperis application, the application may be used for that purpose, but once the status was granted, it should not be used to attack the credibility of a witness in his case in chief.

REASONS FOR GRANTING THE WRIT

1.The long standing rule that a party must elect between breach of contract and rescission before filing a lawsuit unconstitutionally infringes upon the right to a trial by jury and of access to the courts.

2. The use of petitioners' in forma pauperis application to impeach the petitioners credibility on their underlying claim infringed upon petitioners' right to that status, as guaranteed by the United States Constitution.

1. The rights to trial by jury and of access to the courts have placed the old rule of election between breach of contract and rescission remedies before filing a lawsuit in an anachronistic mode, making it a relic of the past.

While most courts follow the **mantra** that upon discovery of a fraudulent misrepresentation the purchaser has to elect between two rights. He was put to the choice of repudiating (rescission) or ratifying the transaction (by suing for damages) and that if he chose to sue for damages he waived the right of rescission, Dean v. Garland, 779 A. 2d 911, supra; Merritt v. Craig, 130 Md. App. 350, 746 A. 2d 923; there has never been an analysis of the impact of this rule on the right to a trial by jury and the merger of law and equity.

Beacon Theatres, Inc. v. Westover, 359 U.S. 500, 79 S.Ct. 948, 3 L. Ed. 2d 988; Dairy Queen v. Wood, 369 U.S. 469, 82 S.Ct. 894, 8 L Ed.2d 44; Ross v. Bernhard, 396 U.S. 531, 90 S. Ct.733, 24 L. Ed. 2d 729, make it clear that the **mantra** that one must elect a remedy before filing suit and that by joining a legal claim with an equitable claim, the equitable claim is waived because of the claim for damages, is a mantra whose days should come to an end.

If the object of the rule is a single recovery, the object does not require a party to make an election prior to filing a lawsuit. Requiring such an election upon conclusion of the

case where both issues are tried, law and equity, fulfills the requirement of a single recovery and preserves the right to trial by jury. Requiring such an election upon the conclusion of the case where both issues are tried does not deny a claimant access to the courts and does not punish a claimant for exercising a constitutional right.

Requiring the petitioners in this case to elect between suing for rescission or for damages before suit was filed, and dismissing the rescission count of the petitioners' complaint impermissibly infringed upon petitioners' right to a trial by jury, upon petitioners' right of access to the courts, and punished petitioners for the exercise of their constitutional rights by having the rescission count of their complaint dismissed.

2. In the instant case, the respondents were permitted over objection to use the affidavit of petitioners in their in forma pauperis application to impeach the petitioners credibility at trial. On appeal, the District of Columbia Court of Appeal affirmed the ruling of the trial court which allowed respondents to use petitioners in forma pauperis application to impeach the petitioners, ruling that such impeachment was permissible as prior bad conduct relevant to credibility determination.

If such a ruling is permitted to stand, petitioners who seek in forma pauperis status would have the fact that they are proceeding in forma pauperis brought out before the jury, to be used against them, and in addition their right to that status would affect their underlying claim, causing resentment and anguish, and chilling their constitutional rights.

If the in forma pauperis application is to be challenged, it should be challenged at the time the status is sought and in a separate proceeding.

CONCLUSION

The District of Columbia Court of Appeals erred in affirming the rulings of the trial court in this case, and for the reasons cited, the petition should be granted to correct the constitutional errors of that court.

Respectfully submitted,

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No. 97-CV-1089

DISTRICT OF COLUMBIA COURT OF APPEALS

MATTIE WRIGHT DEAN AND STAMBERT DEAN, APPELLANTS

v.

BARBARA GARLAND, et al., APPELLEES

February 1, 2000, Argued

August 30, 2001, Decided

COUNSEL:
A. Palmer Ifill for appellants.

John A. Taylor for appellee Barbara Garland.

Leonard C. Collins for appellees Carolyn Wilson and Murrell, Inc.

JUDGES:
Before TERRY and FARRELL, Associate Judges, and KING, Senior Judge.

OPINIONBY:
TERRY

OPINION:

[*913]

TERRY, *Associate Judge*: Mattie Wright Dean and Stambert Dean bought a house from Barbara Garland. Carolyn Wilson and Murrell, Inc., acted as real estate agents

for the transaction. After the sale was completed and the Deans had moved into the house, they filed this suit alleging breach of contract and fraud, and seeking both damages and rescission of the contract of sale. The complaint alleged that the house had a wet basement and that Ms. Garland and the agents had made fraudulent representations to the Deans regarding the condition of the basement. Ms. Garland filed a motion to [**2] dismiss the rescission count, which the court granted after a hearing a few months before trial. A jury later returned a verdict in favor of Ms. Garland and the agents, and the court entered judgment accordingly. From that judgment the Deans bring this appeal, raising several claims of error. We affirm.

I

On February 24, 1993, the Deans entered into a contract to purchase a house from Ms. Garland for $ 150,000. The contract included an "inspection addendum" signed on the same date. According to paragraph 32 of the addendum, Ms. Garland agreed to make corrections within ten days after receipt of a pre-purchase inspection report. On March 19, 1993, prior to settlement, Lanny Weintraub from Structural Concepts, Inc., performed an inspection of the premises at the Deans' request. Mr. Weintraub testified at trial that his inspection disclosed "moisture penetration through the exterior walls . . . into the basement." His written inspection report noted, in the "Basement Dampness" category, "water penetration on side wall, also in rear corner." n1 A copy of the report was faxed by the Deans to Carolyn Wilson and Murrell, Inc., on March 19. Three and a half years later, in September [**3] 1996, Mr. Weintraub performed a second inspection "focusing on moisture problems in the basement." On that occasion he found "extensive water penetration on the side rear wall of the house." With the aid of specialized equipment, he determined that this was "current moisture penetration. It wasn't just old moisture penetration."

Mr. and Mrs. Dean both testified that, approximately ten days after sending a copy of Mr. Weintraub's report to Ms. Wilson, they called her because they had not heard from her

and were concerned about the need for repairs in light of the approaching settlement date. Mr. Dean asked Ms. Wilson if she had heard from Ms. Garland "in reference to the inspection report," adverting specifically to paragraph 32 of the addendum to the contract and to his understanding that Ms. Garland "had to respond within ten days whether she was going to do the work or not." Ms. Wilson, however, told the Deans that Ms. Garland did not have to respond in writing "as long as she is going to do the work. The work will be done by settlement." At one point in the conversation, Mr. Dean said that if Ms. Garland was not going to [*914] make the necessary repairs, he was going to void the contract.

On the way to the settlement on April 23, Mr. and Mrs. Dean drove past the house and noticed "that the retaining wall wasn't repaired." At the settlement, Mr. Dean brought this to Ms. Wilson's attention and asked if the rest of the repairs listed on the inspection report had been done. Ms. Wilson replied that she was "pretty [**5] sure" they had been. A short time later Ms. Garland arrived. With the inspection report in his hand, Mr. Dean asked Ms. Garland if the repairs had been completed, to which Ms. Garland responded that they had. Following a private conversation with Ms. Garland, however, Ms. Wilson told the Deans that three of the repairs listed on the report had not been completed, "so what we are going to do is pay you for these items here." Ms. Garland and the agents each agreed to pay the Deans $ 500 to make the repairs. The agreed sums were paid, though the work was never performed. Mr. Dean testified that he believed that the dampness problem in the basement had been corrected and that it was not one of the items acknowledged as incomplete by Ms. Wilson.

Approximately seven months later, after having moved into the house, Mr. Dean discovered that the basement "had flooded, with water coming out of the wall." Mr. Dean hired Daniel Marcus from Mid-Atlantic Waterproofing to inspect the basement and recommend a course of action. Mr. Marcus estimated that the cost of repairs would be approximately $ 15,000.

Clarence Turner, a self-employed contractor, testified on appellees' behalf. He stated that [**6] before the sale was completed, he inspected the downspout on the back of the house and that Ms. Garland had asked him to fix a problem with the drainage system. She described the problem to him as "dampness, and when it rained, dampness would develop. She was getting a little trickle across the floor." Mr. Turner said that before he made any repairs, the rain water "was building up and washing back into the house and running down the steps . . . and up against the back and side walls of the building." To remedy the problem, he installed a four-inch drain, "and I tapped both the downspout at the rear and the front of the house and opened a hole in the [front] wall . . . and poured the water out on the sidewalk." Shortly before trial Mr. Turner returned to the property and noticed that "the downspout looked like it had been damaged and it was not hooked up."

Raymond Casario, a building inspector employed by Budget Waterproofing, inspected the property at appellees' request a few months before trial. Mr. Casario, who had been present in the courtroom during Mr. Marcus' testimony, said that although it was raining on the day of his inspection, he did not notice any water damage, nor [**7] did he smell mildew in the basement. He did, however, notice "some dampness that [he] was actually able to see," but "the only water penetration [he] saw was in the cove area approximately a foot to eighteen inches wide, perhaps a quarter to a half inch on the floor. Certainly there was no buildup of water, no standing water . . . ." Mr. Casario further testified that "there is only one place that water could come from, which is directly under the slab, and through hydrostatic pressure it is actually forced up through the expansion joint, which is the cove area." On the basis of his observations, Mr. Casario estimated that the repairs would cost $ 3,650.

At the end of the trial, the jury returned a verdict in favor of Ms. Garland and the agents.

II

In April 1994 the Deans filed their original complaint, which contained two [*915] counts, one for breach of contract and the other for fraud. Both counts were based on the alleged failure of appellees to perform certain repairs required by the contract of sale. Several months later the Deans filed an amended complaint, containing the same claims as the original but also seeking rescission of the sale of property, and adding Wachovia [**8] Mortgage Company as a defendant. n2

Ms. Garland then filed a motion to dismiss the complaint, which was later joined by the other appellees. In her motion Ms. Garland argued that Wachovia was a necessary party to the rescission count, and that since it had not been properly served, that count should be dismissed. In addition, she maintained that damages for breach of contract and rescission of the contract were mutually exclusive and that the Deans must therefore make an election of remedies. At the hearing on the motion, counsel for the Deans argued that they did not have to elect a remedy until after the verdict, relying principally on *Giordano v. Interdonato, 586 A.2d 714 (D.C. 1991)*. The trial court disagreed:

I don't think the [*Giordano*] case stands for the proposition you say it stands for. . . . That case [**9] stands for the proposition that if there is a basis for two appropriate claims in the first instance and there is evidence to support both, then both can be presented to the jury. I don't think it deals with the issue of whether rescission is mutually exclusive to the other remedies. . . . I am therefore dismissing the rescission claim.

On appeal, the Deans argue that the trial court committed reversible error when it dismissed the rescission count.

"Where a party to an executed contract discovers a material misrepresentation made in the execution of the contract, that party may elect one of two mutually exclusive remedies. He may either affirm the contract and sue for damages, or repudiate the contract and recover that with

which he or she has parted." *Dresser v. Sunderland Apartments Tenants Ass'n, 465 A.2d 835, 840 (D.C. 1983)* (citing *Millard v. Lorain Investment Corp., 184 A.2d 630, 632 (D.C. 1962)*, and *Kent Homes, Inc. v. Frankel, 128 A.2d 444, 445 (D.C. 1957)*). "One cannot rescind for breach of [contract] and at the same time recover damages for the breach." *Campbell Music Co. v. Singer, 97 A.2d 340, 342 (D.C. 1953)* [**10] (footnote omitted); *see Kent Homes, 128 A.2d at 445; Orrison v. Ferrante, 72 A.2d 771, 774 (D.C. 1950)*. "The purpose of the doctrine of election of remedies is not to prevent recourse to any remedy, but to prevent double redress for a single wrong." *Twin City Federal Savings & Loan Ass'n v. Transamerica Insurance Co., 491 F.2d 1122, 1125 (8th Cir. 1974)*, cited in *Giordano, 586 A.2d at 717*. But if the defrauded party treats the property as his own and affirms the contract through continued performance, that party is precluded from seeking rescission. *Dresser, 465 A.2d at 840 nn.16 & 17.*

In addition, inherent in the remedy of rescission is the return of the parties to their pre-contract positions. Rescission is an equitable remedy, and a party seeking rescission must restore the other party to that party's position at the time the contract was made. *See Kent Homes, 128 A.2d at 446.* This rule applies even when the party against whom rescission is sought has committed fraud. In the present case, the Deans were aware that at least three agreed-upon repairs had not been completed before [**11] settlement, [*916] but they nevertheless proceeded with the settlement and accepted the property with these problems, in exchange for payment from appellees, and did not seek rescission for a year and a half after they had moved in. In these circumstances rescission was not an available remedy, and the trial court did not err in dismissing that count.

The Deans' reliance on *Giordano* is misplaced. In that case we held that the trial court had erred by requiring the plaintiff to elect between a claim alleging breach of a fiduciary duty and a claim alleging breach of a subsequent agreement designed to settle the claim of fiduciary breach. Unlike the Deans in the case at bar, however, the plaintiff in *Giordano* did not assert at trial that she was entitled both to

damages for the alleged breach and to specific performance of the settlement agreement. Moreover, while concluding that the trial judge had erred, we also held that "the judge was correct in concluding that the remedies plaintiff sought were duplicative and that, in the event of a judgment favorable to her, she could not win relief on both claims." *Giordano, 586 A.2d at 717.* Thus, insofar as it is relevant at [**12] all, *Giordano* supports the trial court's ruling here.

We conclude accordingly that the trial court committed no error in dismissing the rescission count. Any issue as to whether Wachovia Mortgage Company might have been an indispensable party is therefore moot.

III

The Deans also argue that the trial court erred in allowing Mr. Casario, appellees' expert witness, to remain in the courtroom during the testimony of their own experts, Mr. Weintraub and Mr. Marcus. It was understood before trial that all of these witnesses would be testifying about the wetness problem and possible remedies. At trial, however, counsel for the Deans objected to Mr. Casario's remaining in the courtroom, saying, "We would be at a disadvantage because we would be releasing our witnesses, and their schedule is such that they would not be able to come back and hear what their witness has to say." The court nevertheless ruled that each side's experts could remain in the courtroom to hear the others' testimony, remarking, "It is routinely done so that they can comment more particularly and explain to the jury why something may be so or not so." n3

This court's decision in *Johnson v. District of Columbia, 655 A.2d 316 (D.C. 1995)*, is controlling on this point. In *Johnson* we held that "the exclusion of witnesses from the courtroom during trial is a matter within the discretion of the trial court." *Id. at 317* (citation omitted); *accord, e.g., Garmon v. United States, 684 A.2d 327, 328 (D.C. 1996).* In order to obtain reversal, an appellant must show that he or she was prejudiced by the court's action. *Johnson, 655 A.2d at 318.* The fact that the Deans' witnesses had scheduling

conflicts that would make them unavailable to hear appellees' expert testify does not rise to the level of prejudice sufficient to require reversal. Moreover, in *Johnson* we explicitly took note of "a well-established distinction between factual witnesses and expert witnesses," *id.*, citing cases which found "little, if any, reason for sequestering a witness who is to testify in an expert capacity only and not to the facts of the case." *Morvant v. Construction Aggregates Corp., 570 F.2d 626, 629* (6th Cir.), *cert. dismissed, 439 U.S. 801, 99* [*917] *S. Ct. 44, 58 L. Ed. 2d 94 (1978).* The [**14] trial court plainly recognized such a distinction in the case at bar. On the record before us, we can discern no prejudice resulting from the court's decision to allow Mr. Casario to remain in the courtroom, and thus no abuse of discretion warranting reversal.

IV

The Deans argue that the trial court erred in allowing appellees' counsel to impeach their credibility on cross-examination. Specifically, counsel asked Mr. Dean a series of questions about a fraudulent affidavit he had filed in support of his motion to proceed *in forma pauperis.* The affidavit stated that Mr. Dean did not own any real property or motor vehicles when in fact he owned both. The Deans' counsel objected, arguing that the examination was an improper means of eliciting evidence of character and prior bad acts. The trial court overruled the objection, ruling that false statements by Mr. Dean made in connection with this case had a bearing on whether he was a credible witness. In addition, counsel for the agents put Mrs. Dean on the stand and questioned her about a statement she had made on a credit information form, submitted in connection with the Deans' application for a mortgage loan to buy the house [**15] from Ms. Garland, which indicated that she and her husband had $ 18,000 more in a bank account than they actually had.

In this jurisdiction, contrary to appellants' assertions, a witness may be impeached by questions concerning prior bad conduct relevant to credibility. *See, e.g., Brown v. United*

States, 726 A.2d 149, 153 (D.C. 1999); Murphy v. Bonanno, 663 A.2d 505, 508-509 (D.C. 1995); Portillo v. United States, 609 A.2d 687, 690- 691 (D.C. 1992). When the prior bad conduct does not rise to the level of a criminal conviction, two requirements must be met before such questions are permissible: "(1) the examiner [must have] a factual predicate for [the] question, and (2) the bad act '[must bear] directly upon the veracity of the witness in respect to the issues involved in the trial.' " *United States v. Akers, 374 A.2d 874, 878 (D.C. 1977)* (citations omitted); *accord, Woodward & Lothrop v. Hillary, 598 A.2d 1142, 1149 (D.C. 1991)* (citing cases).

In the present case, appellees wanted to show that the Deans had engaged in deceptive conduct at various times in the past with respect to matters [**16] directly involved in this litigation. The factual predicate was found in Mr. Dean's false affidavit and Mrs. Dean's questionable statement on the credit form. The fact that the Deans would be willing to give false information in an affidavit and alter a financial statement in order to secure a loan bore directly on their credibility as witnesses. In these circumstances we find no error in the trial court's decision to allow them to be questioned about these matters.

V

Finally, the Deans argue, for the first time on appeal, that the trial court erred in admitting the HUD inspection report (see note 1, *supra*) because it was hearsay. At trial, however, they objected to the report only on the ground that it was not relevant, not on hearsay grounds. It is settled law in this jurisdiction that "once hearsay evidence is admitted without objection, it may be properly considered by the trier of fact and given its full probative value." *Eldridge v. United States, 492 A.2d 879, 883 (D.C. 1985)* (citations omitted). In order to reverse, we would have to find plain error in the admission of the report, which the Deans have not shown. Indeed, had a hearsay objection been [**17] timely made below at the pre-trial hearing, the author of the report could have been

subpoenaed and made available to testify at [*918] trial. Appellants' claim of error at this stage comes too late. n4

The judgment is therefore
Affirmed.

----------Footnotes----------

n1 Another inspection report, prepared as part of an appraisal for the Department of Housing and Urban Development (HUD), contained no mention of moisture problems in the basement. At a pre-trial hearing held on October 1, 1996, appellants' counsel objected to the admission of this report on the ground of relevancy. After hearing argument from opposing counsel, the trial court ruled that the inspection report was relevant and therefore admissible. When the court asked appellants' counsel whether there was "something in particular" in the report that counsel found objectionable and offered to hear him on the matter, counsel made no specific complaint, saying only, "I'll let my objection stand." The report was admitted into evidence at trial as a defense exhibit.

n2 It appears from the record that Wachovia Mortgage Company was never served with process. Wachovia took no part in the trial and has not been involved in any way in this appeal.

n3 Although neither side's witnesses were formally qualified as "experts," as both appellees emphasize in their briefs, the testimony of Mr. Weintraub, Mr. Marcus, and Mr. Casario was admitted without any challenge to their qualifications.

n4 We have considered the Deans' other challenges to certain evidentiary rulings and find them without merit, essentially for the reasons stated by the trial court when it ruled on those same challenges.

No. 97-CV-1089
SUPERIOR COURT OF THE
DISTRICT OF COLUMBIA COURT

MATTIE WRIGHT DEAN AND
STAMBERT DEAN,
PLAINTIFFS

v.

BARBARA GARLAND, et al.,
DEFENDANT

June 02, 1997

JUDGMENT

This action came on for trial before the court and a jury, Honorable Judith E. Retchin, Superior Court Judge, presiding, and the issues having been duly tried and the jury having duly rendered its verdict on May 22, 1997, it is this 30th day of May, 1997.

ORDERED

That the plaintiffs Mattie Wright Dean and Stambert Dean take nothing, that the action be dismissed on the merits, and that the defendants Barbara Garland, Carolyn Wilson, Murrell Agent Murrell, Inc. – Realtors and Murrell, Inc. recover of the plaintiffs their costs of action.

No. 97-CV-1089

DISTRICT OF COLUMBIA
COURT OF APPEALS

MATTIE WRIGHT DEAN AND
STAMBERT DEAN,
APPELLANTS

v.

BARBARA GARLAND, et al.,
APPELLEES

January 17, 2002, Decided

ORDER

On consideration of appellants' petition for rehearing and rehearing en banc, appellee's (Garland) response thereto, and appellee's (Murrell, Inc. Realtors) motion for leave to file the lodged response to appellants' petition, it is

Ordered by the merits division* that the petition for rehearing is denied. It is

Further Ordered that appellee's (Murrell, Inc. Realtors) motion is granted and the Clerk is directed to file the lodged response; and it appearing that no judge of this court has called for a vote on the petition for rehearing en banc, is

Further Ordered that the petition for rehearing en banc is denied.